

STATE OF TENNESSEE

Office of the Attorney General



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Reply to:  
Consumer Advocate and Protection Division  
Post Office Box 20207  
Nashville, TN 37202

August 1, 2002

Chairman Sara Kyle  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, Tennessee 37243

**RE: IN RE: UNITED CITIES GAS COMPANY, a Division of ATMOS ENERGY  
CORPORATION INCENTIVE PLAN ACCOUNT (IPA) AUDIT  
Docket No.: 01-00704**

Dear Chairman Kyle:

Enclosed is an original and fourteen copies of our Response and Objection to United Cities Gas Company's Petition for Discovery and Request for Additional Time to Respond to the Motion for Partial Summary Judgment by the Consumer Advocate & Protection Division of the Office of the Attorney General. We request that these documents be filed with the TRA in this docket. Additionally, all parties of record have been served copies of these documents. If you have any questions, kindly contact me at (615) 532-3382. Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Shilina B. Chatterjee".

Shilina B. Chatterjee  
Assistant Attorney General

Enclosures

**IN THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE**

<b>IN RE:</b>	) <b>DOCKET NO. 01-00704</b>
<b>UNITED CITIES GAS COMPANY, a</b>	)
<b>Division of ATMOS ENERGY</b>	)
<b>CORPORATION INCENTIVE PLAN</b>	)
<b>ACCOUNT (IPA) AUDIT</b>	)
	)

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**RESPONSE AND OBJECTION TO UNITED CITIES GAS COMPANY'S PETITION  
FOR DISCOVERY OF THE CONSUMER ADVOCATE AND PROTECTION  
DIVISION OF THE OFFICE OF THE ATTORNEY GENERAL**

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Comes Paul G. Summers, the Attorney General & Reporter, through the Consumer Advocate and Protection Division of the Office of Attorney General (hereinafter "Attorney General") and hereby objects to the Petition for Discovery ("Petition") filed by United Cities Gas Company ("UCG").

The Attorney General respectfully objects to the petition for discovery filed by UCG and requests that UCG's petition be denied for the following reasons:

Tenn. Comp. R. & Reg. 1220-1-2-.11 indicates that there is a preference for informality in the discovery process to "avoid undue expense and delay."<sup>1</sup> In addition, the Tennessee Rules of Civil Procedure governs the scope of discovery in this proceeding before the Tennessee Regulatory Authority. The TRA Rules state that any objections to discovery requests should be presented in accordance with the Tennessee Rules of Civil Procedure. Tenn. Comp. R. & Reg. 1220-1-2-.11(7). Therefore, the Tennessee Rules of Civil Procedure provide additional guidance concerning the scope of discovery before the TRA. Unless

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<sup>1</sup> Tenn. Comp. R. & Reg. 1220-1-2-.11(1).

otherwise limited by order of the Court in accordance with these rules, the scope of discovery is to obtain relevant information. TENN. R. CIV. P. 26.02 states:

Rule 26.02 Discovery Scope and Limits.

(1) IN GENERAL. Parties may obtain discovery regarding any matter not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objections that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

This allows the parties to obtain any information during discovery that is relevant and not privileged. TENN. R. CIV. P. 26.02(1). Nevertheless, the scope of proper discovery is not unlimited. Rule 26.02(1) states that there are limitations on the discovery of information that is unreasonably cumulative or duplicative, obtainable from other sources, or unduly burdensome.

Further, under the traditional practices and procedures of the TRA, discovery is not granted without a party demonstrating a need for discovery. In this matter, the information that UCG is seeking is unreasonably cumulative, duplicative, obtainable from another source and unduly burdensome. UCG incorrectly states that the Attorney General's Motion for Partial Summary Judgment and Brief in support thereof raised certain issues that required discovery.<sup>2</sup> There were no issues raised in the Motion for Partial Summary Judgment that

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<sup>2</sup> Of particular note, is the fact that the last three data requests sought by UCG are immaterial to the Motion for Partial Summary Judgment filed by the Attorney General.

were not already issues in this docket. Additionally, relevant information in this matter is available to UCG and allowing discovery in this matter would be unreasonably cumulative and unduly burdensome. As previously stated above, the Tennessee Rules of Civil Procedure 26.02(1) permits limitations on the discovery of information that is unreasonably cumulative or duplicative, obtainable from another source, or unduly burdensome. Tennessee Rules of Civil Procedure 26.02(1).

Since discovery is obtainable by less burdensome means, formal discovery should not be permitted.<sup>3</sup> UCG already has access to documents in this docket and the motion for summary judgment that was recently filed does not contain significant information outside of the record in this matter. Also, any matters that are not in the record can be rebutted by UCG's expert. There is no need for formal discovery in this proceeding. The hearing officer granted official notice of the entire record in this proceeding. UCG already has access to the information they are seeking and formal discovery is not necessary.

By allowing formal discovery in this matter, it will not result in the discovery of facts that are not already known and/or available by other means. The purpose of TENN. R. CIV. P. 26.02(1) is to allow for discovery of facts which "will enable litigants to prepare for trial free from the element of surprise . . ." *Strickland v. Strickland*, 618 S.W. 2d 496, 501 (Tenn. Ct. App. 1981). Discovery is unnecessary since all relevant facts are in the hands of UCG

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<sup>3</sup> See *Conger v. Gowder*, No. E2000-01584-COA-R3-CV, 2001 WL 301155 at \*5 (Tenn. Ct. App. March 29, 2001) (when ruling on discovery requests, "a trial court should consider whether less burdensome means for acquiring the requested information are available.")

and there is no element of surprise in this docket.

If the TRA allows full discovery and grants UCG's petition, this matter will be unnecessary delayed. This matter has been pending since August 9, 2001 when the audit was issued by the TRA. On April 12, 2002, UCG made their request for an evidentiary hearing and this matter still has not been heard by the TRA. It is likely that allowing discovery will further delay the matter and any further delay should be avoided. If formal discovery is instituted, it will further postpone adjudication of this matter and will ultimately harm consumers. The hearing officer has already rescheduled the pre-hearing conference that was set for July 23, 2002. This further delayed the adjudication of this proceeding. If formal discovery is allowed, it will cause additional delay. The consumers of the State of Tennessee have already overpaid for the cost of natural gas and until this matter is concluded they will be unnecessarily paying higher gas rates. Since there is a less burdensome means to conduct discovery informal means are more practical and efficient for the speedy resolution of this matter. The TRA should ensure that this matter is speedily resolved and proceeds forward and efficiently without undue delay.

If discovery is expensive, duplicative, unduly burdensome, or if there is more efficient

sources to obtain the information limitations on discovery are permitted. 3 Tennessee Practice 440 (2d ed. 1989). The potential material that UCG seeks is either already in their possession or is obtainable from other sources and therefore, formal discovery is not necessary.

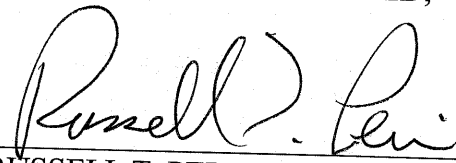
The TRA has the authority to not allow discovery in this proceeding. Tennessee Code Annotated § 4-5-311(c) provides that “[t]he agency may promulgate rules to further prevent abuse and oppression in discovery.” Also, a court has broad discretion in limiting or prohibiting discovery of relevant and non-privileged information in order to prevent “annoyance, embarrassment, oppression or undue burden or expense . . . .” FED R. CIV. PRO. 26(c).

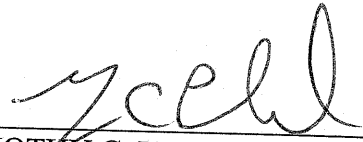
Lastly, it would be unfair and prejudicial to allow UCG to obtain discovery in this proceeding. Therefore, UCG should not be permitted to obtain discovery unless the Attorney General can also obtain discovery from UCG.

WHEREFORE, we object to formal discovery being permitted in this matter since it is unnecessary and frivolous and UCG can address factual defenses and provide a defense with the need for formal discovery.

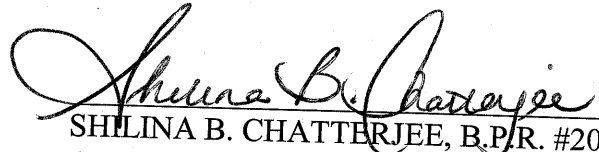
For the foregoing reasons, the Attorney General respectfully requests that the hearing officer consider the above and deny the petition for discovery filed by UCG.

RESPECTFULLY SUBMITTED,

  
RUSSELL T. PERKINS, B.P.R. #10282  
Deputy Attorney General



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(615) 532-3382

Dated: August 1, 2002

## CERTIFICATE OF SERVICE

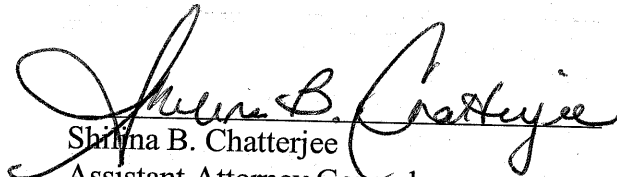
I hereby certify that a true and correct copy of the foregoing was served via facsimile and/or hand delivery on August 1<sup>st</sup>, 2002.

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